IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2006

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.37867 of 2003

E.M.Master Veeramani .. Petitioner

Versus

1.The Tamil Nadu State Transport
Corporation, Salem Division-2,
Bharathipuram, Dharmapuri.

2.The Presiding Officer,
Labour Court,
Salem. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India as stated therein.

For Petitioner : Mr.S.Kumaradevan
For Respondents : Mr.L.G.Sahadevan for R1

O R D E R

The writ petition has been filed for the issuance of a Writ of Certiorarified Mandamus to call for the records connected with the orders passed by the second respondent in I.D. No.162 of 2002, dated 12.12.2002, in so far as it relates to the denial of the petitioner's back-wages and continuity of service and also the fixation of compensation, which is not in accordance with the Apex Court's guidelines made in AIR 91 SC 1003 and quash the same and also to direct the management to reinstate the petitioner with back-wages and continuity of service.

2. Heard the learned counsel appearing for the petitioner as well as for the respondent.

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The brief facts of the case, as stated by the petitioner, are as follows:

3. The petitioner had joined in the service of the first respondent Corporation as a Conductor, on 19.01.1990 and was made permanent, on 01.12.1990. The petitioner had served in the first respondent Corporation for about ten years, without any blemish. The last drawn wages of the petitioner was Rs.5,951/- per month.

4.The petitioner was affected by Diabetes during the tenure of his service and therefore, he was not in a position to perform his duties by standing in the running bus as a Conductor. Hence, the petitioner had requested the Management of the first respondent Corporation to provide him with an alternate job, as per the agreement entered into earlier. According to the said agreement, if any employee of the Corporation was suffering due to medical disabilities, he would be given an alternate employment in the Corporation, in the lowest scale of pay applicable to that category.

5.The petitioner was directed by a communication of the Management, dated 26.6.2000, to appear before the Medical Board for a complete check up. As per the directions of the first respondent Corporation, the petitioner had appeared before the Medical Board. The Medical Board, after following the necessary formalities, had given its opinion by submitting a report stating that the petitioner was not fit to perform his duties as a conductor, since it involved continuous standing in the running bus. However, the Medical Board had recommended to the Management of the first respondent Corporation that the petitioner may be provided with an alternate job. The Management of the first respondent Corporation, by its communication, dated 19.8.2000, had called for an explanation from the petitioner, by way of a show cause notice, as to why he should not be terminated from service, based on the findings of the Medical Board. The petitioner has submitted his explanation, on 06.09.2000. However, the Management of the first respondent Corporation had terminated the services of the petitioner, on 19.9.2000, by paying his retiral benefits of Rs.24,931/-, including the gratuity amount.

6.The petitioner had placed the issue before the Conciliation Officer and since the Conciliation proceedings had failed, the petitioner had raised an Industrial Dispute in I.D.162 of 2002, before the second respondent labour Court. The second respondent labour Court, after considering all the materials and documents placed before it and after appreciating the evidence adduced by both the sides, had found that the termination of the

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petitioner was illegal on the following grounds.

"(a) The termination order does not speak about the recommendations of the Medical Board, which had directed the Management to provide the petitioner alternative work.

(b) While passing the termination order, the agreement marked as Exhibit W4, which entitles an employee for an alternate job, if he found to be unfit on medical grounds, was not taken into account.

(c) The termination order has been passed without considering the Government letter, dated 19.1.2000, which is marked as Exhibit W5 in which permission has been granted for appointing the employees, who were terminated on medical grounds (or) the legal heirs of those employees in an alternate post i.e. As helpers if the said posts are vacant."

7.Based on the above grounds, the termination order of the first respondent Management was set aside by the second respondent labour Court and it had further directed the first respondent Management to reinstate the petitioner in an alternate job, without back-wages. It was also stated that in case it was not possible to reinstate the petitioner, the Management of the first respondent Corporation has to pay a sum of Rs.35,000/- to the petitioner, as compensation.

8.Hence, the petitioner has filed the present writ petition challenging that portion of the award of the second respondent labour Court by which the labour Court had directed the Management of the first respondent Corporation to reinstate the petitioner without back-wages.

9.The petitioner has also been aggrieved by the direction given by the second respondent labour Court stating that the first respondent Management may pay a sum of Rs.35,000/- to the petitioner, as consolidated amount, instead of reinstating the petitioner.

10.The petitioner had challenged the award of the second respondent labour Court, dated 12.12.2002, made in I.D.No.162 of 2002, to the extent he was aggrieved by the said award.

11.In the counter affidavit filed on behalf of the first respondent, it has been stated that the petitioner, by his letter, dated 19.6.2000, had requested for alternate employment stating that he was suffering from Diabetes and therefore, he was unable to perform his duties as a Conductor. Based on the said request of the petitioner, he was directed to appear before the Medical Board, Dharmapuri, by the letter of the first respondent Corporation, dated 26.06.2000. After examining the petitioner, the Medical Board

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had given an opinion, dated 28.07.2000, stating that the petitioner was unfit to work as a Conductor, as he cannot work in a standing position. Based on the said report of the Medical Board, a show cause notice, dated 19.8.2000, was issued to the petitioner to explain as to why he should not be discharged from service on medical grounds. The petitioner had given a reply, dated 6.9.2000. Since the reply was not satisfactory, he was discharged from service, from 19.9.2000. Further, a sum of Rs.24,931/- was paid to him as gratuity.

12.It has also been stated that there is no settlement to give alternate employment to the employees who were found to be medically unfit by the Medical Board. Further, there is no alternative work available to be provided to the petitioner. Under such circumstances, the petitioner was not entitled for reinstatement or back-wages. It is false to state that the petitioner was declared fit for other jobs.

13.On a perusal of the records available and on analysing the rival contentions of the parties, it is clear that the petitioner had been discharged from service only due to the fact that he had incurred certain disabilities during his employment. No charges had been framed on the petitioner by the first respondent on any other ground. It is also seen that the concerned Medical Board, after examining the petitioner, had certified that he was unfit to work as a Conductor in a standing position, due to his ill-health. In such circumstances, it is not open to the first respondent Corporation to discharge the petitioner from service, based on the ground of illness due to which the petitioner was unable to do a particular type of job. The first respondent Corporation is duty bound to provide the petitioner with alternate employment, which he is capable of doing.

14.In an earlier case, this Court had, by its order, dated 28.4.2006, made in W.P.No.38154 of 2003, in similar circumstances, ordered re-employment of the petitioner/employee in a suitable post, without salary for the period during which he was not actually employed. The above view is fortified by the various recent orders of this Court following the earlier orders of the Supreme Court of India.

15.In a recent decision of a Division Bench of this Court in G.Muthu Vs. The Management of Tamil Nadu State Transport Corporation (Madurai) Ltd., rep. by its Managing Director, reported in (2006(5) CTC 413), this Court had held that the benevolence provided by a welfare legislation cannot be denied on the ground of hyper technicalities. Therefore, the discharge from service of an employee, without providing an alternate employment in accordance with Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act,

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1995, is unjustified and unreasonable, if the discharge from service is based only on Medical ground. Similarly, the Supreme Court in Kunal Singh Vs. Union of India & Another (2003-2-L.W.754), had clearly held that Section 47 of the said Act contains a clear directive that the employer shall not dispense with or reduce in rank an employee, who acquires a disability during his service, since the Act is a special legislation dealing with persons with disabilities, seeking to provide equal opportunities to them.

16.In such circumstances, the writ petition is allowed directing the first respondent to provide the petitioner with an alternate employment in which the petitioner is capable of performing his duties, in accordance with Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, within eight weeks from the date of receipt of a copy of this order. However, it is made clear that the petitioner shall be reinstated, as directed above, without back-wages for the period during which the petitioner was not actually employed in the first respondent Corporation. However, the said period shall be counted for pensionary benefits that would be payable to the petitioner.

17. With the above directions, the writ petition is disposed of. No costs.
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Sd/
Asst.Registrar

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Sub Asst.Registrar

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To:

The Tamil Nadu State Transport
Corporation, Salem Division-2,
Bharathipuram, Dharmapuri.

The Presiding Officer,
Labour Court,
Salem.

3. The Record Keeper, VR Section, High Court
Madras

+ one cc to Mr. L.G. Sahadevan, Advocate sr no. 62473

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